

Civil Claim Settlement Laws

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Contents

Chapter I • Introduction	3
A. Intrastate Mix of Constitutional, Statutory, Court Rule, Case Decision and Regulatory Laws on Civil Claim Settlements	4
1. The Variety of Relevant Lawmakers	4
<i>Koval v. Simon Telelect, Inc.</i>	5
2. Conflicts among Lawmakers	10
a. Conflicts over Civil Practice Laws	10
b. Conflicts over Professional Conduct Laws	11
<i>Cripe v. Leiter</i>	12
c. Conflicts over Judicial Administration Laws	16
3. Reconciling General and Special Laws	17
<i>Black v. City of Atlanta</i>	18
B. Resolving Interstate Differences in the Laws on Civil Claim Settlements	20
<i>Reo v. U.S. Postal Service</i>	20
C. Widgets and Divorce Decrees: Same Contract Law Principles?	24
D. Same Contract Law Principles for All Civil Claim Settlements?	25
Comment: Against Settlement	26
E. The Differing Contract Laws for the Settlement of Different Civil Claims	33
Illinois Compiled Statutes	34
Alaska Statutes	37
F. Contrasts between Resolving Civil and Criminal Cases	37
Chapter II • The Settlement of Procedural Law Issues	
Before Civil Claims Arise	41
A. Preclaim Agreements on Utilizing Alternative Dispute Resolution Forums: Mandatory Arbitration	42
1. The Federal Arbitration Act	44
<i>Allied-Bruce Terminix Cos. v. Dobson</i>	45
<i>Buckeye Check Cashing, Inc. v. Cardegna</i>	52
2. Arbitrating International and Wholly Local Disputes	55
ADR in a Global Setting Keeps Matters Closer to Home	55
3. Substantive Limits on Contracts to Arbitrate Future Claims	58
<i>Koveleskie v. SBC Capital Markets, Inc.</i>	58
<i>Pulfer v. Pulfer</i>	65
4. Procedural Requirements for Mandatory Arbitration Schemes	69
Predispute ADR Raises Fairness Issue	70
B. Preclaim Agreements on Utilizing Other Alternative Dispute Resolution Forums	74
C. Preclaim Agreements on the Procedures in General Jurisdiction Trial Courts	75

1. Personal Jurisdiction	75
2. Choice of Forum	76
3. Choice of Law	78
4. Jury Trial	78
5. Time Limits	80
Chapter III • The Settlement of Substantive Law Issues	
Before Civil Claims Arise	81
A. Introduction and Some General Principles	83
ALI, Restatement of the Law — Contracts (Second)	83
<i>DeVito v. N.Y.U. College of Dentistry</i>	84
B. Agreements on Public Service Duties	88
<i>Olson v. Molzen</i>	88
C. Agreements Involving Protected Classes	92
<i>Murphy v. North American River Runners</i>	93
D. Agreements with Governments	97
E. Agreements on Family Matters	99
Louisiana Revised Statutes	103
Louisiana Civil Code	105
<i>Pacelli v. Pacelli</i>	106
<i>Straub v. B.M.T. by Todd</i>	111
<i>Posik v. Layton</i>	114
F. Liquidated Damages	118
Chapter IV • Nonparty Interests in Civil Claim Settlements:	
Lienholders and Others	121
A. General Ancillary Jurisdiction over the Resolution of Unpleaded Claims and Interests	122
<i>United Mine Workers v. Gibbs</i>	123
<i>Azevedo v. Club Getaway, Inc.</i>	125
<i>Kokkonen v. Guardian Life Insurance Co.</i>	127
<i>Cluett, Peabody & Co. v. CPC Acquisition Co., Inc.</i>	129
B. Resolution of the Interests of Lawyers	134
<i>Venegas v. Mitchell</i>	135
C. Resolution of the Interests of Lienholders and Others	140
<i>Burrell v. Southern Truss</i>	141
<i>Temesvary v. Houdek</i>	144
Chapter V • Civil Claim Settlement Talks	151
A. Confidential or Privileged Nature of Civil Claim Settlement Talks	152
Alabama Rules of Evidence	152
Code of Virginia	154
<i>Khatib v. McDonald</i>	154
B. Duties of Disputing Parties to Discuss Possible Settlement	157
1. Good Faith Settlement Talks	157
<i>Guillory v. Domtar Industries Inc.</i>	158
2. Compelled Attendance of Those with Settlement Authority	161
<i>G. Heileman Brewing Co., Inc. v. Joseph Oat Corp.</i>	162
<i>Spikes v. Body Beautiful Car Wash, Inc.</i>	166
C. The Role(s) of Presiding Officials at Settlement Talks	168

1. Cases Where Judicial Approvals of Settlements Are Unnecessary	168
Tone, The Role of the Judge in the Settlement Process	169
ABA Committee on Ethics and Professional Responsibility	174
2. Cases Where Judicial Approvals of Settlements Are Necessary	177
3. Involving Nonparties in Settlement Talks	180
<i>Pratt v. Philbrook</i>	180
D. Limitations on Lawyers and Parties at Settlement Talks	185
1. Threats of Criminal or Disciplinary Actions	185
ABA Model Code of Professional Responsibility	185
Georgia Rule of Professional Conduct 9.2	185
Illinois Rules of Professional Conduct 1.2(e)	185
Maine Professional Conduct Rule 3.1(b)	185
Alaska Bar Association Ethics Committee	186
2. Harassing or Unwarranted Assertions	189
ABA Model Code of Professional Responsibility	189
ABA Model Rules of Professional Conduct	189
3. Nonlawyer Agents as Negotiators for Parties	190
<i>Bergantzel v. Mlynarik</i>	190
4. No Suit, Evidence Suppression and Comparable Promises	198
5. Ex Parte Contacts and Settlement Talks	199
6. Lawyers Who Disagree with Their Clients' Decisions Not to Settle	200
Chapter VI • Authority to Settle Existing Civil Claims	201
A. The Requirement That Parties to Civil Disputes Settle Their Own Claims and Its Exceptions	203
<i>Matter of Lewis</i>	203
B. An Attorney's Ability to Settle a Civil Claim on Behalf of a Client	207
1. Delegated Authority	207
2. Apparent Authority	207
<i>Brewer v. National Railroad Passenger Corp.</i>	208
3. The Attorney's Ability to Bind without Client Conduct	210
C. Civil Claim Settlements for the Incapacitated	212
1. Incapacity Due to Age	212
<i>Meyer v. Naperville Manner, Inc.</i>	213
Hamilton County, Ohio Court of Common Pleas	
Probate Division Local Rule 68.1	215
<i>Mitchell v. Mitchell</i>	216
2. Incapacity Due to Mental State	218
<i>In re Barry B.</i>	218
D. Civil Claim Settlements for the Dead as Claimants	219
Rule 12.15 Personal Injury and Wrongful Death Actions	220
E. Class Actions	222
F. Civil Claim Settlements for Private Claimants Represented by Government	222
<i>U.S.E.E.O.C. v. Johnson & Higgins</i>	223
G. Civil Claim Settlements for Married People	225
<i>Lampe v. O'Toole</i>	225
H. Civil Claim Settlements for Institutions	227
1. Private Entities	227
<i>Lloydona Peters Enterprises, Inc. v. Dorius</i>	228
"NAACP Absolved in Chavis Sex Case"	230

2. Public Entities	231
Governor Sues to Block Tobacco Suit	233
<i>Carver v. Condie</i>	235
I. Civil Claim Settlements by Parties Involved with Insurance or Indemnity	241
Florida Civil Procedure Rule 1.280(b)(2)	242
Arizona Civil Procedure Rule 26(b)(2)	242
Federal Civil Procedure Rule 26(a)(1)(A)	242
<i>Safeco. Ins. Co. v. Superior Court</i>	245
Chapter VII • Contractual Requirements for Setting Existing Claims	251
A. Choice of Applicable Contract Law	252
1. Conflict of Laws and Preemption Analyses	252
<i>Dice v. Akron, Canton & Youngstown R. Co.</i>	252
<i>Newton v. Rumery</i>	254
<i>City of Chicago Heights v. Crotty</i>	256
2. Separation of Powers Analysis	260
B. The Forms of Settlement Contracts	260
1. Written, in Court and Oral Agreements	260
Rule 402. Pleas of Guilty or Stipulations Sufficient to Convict	261
ALI, Restatement of the Law, Contracts (Second)	263
Stark County, Ohio Rules of Practice of the Court of Common Pleas, Rule 16.08	265
California Code of Civil Procedure § 664.6	266
Texas Civil Procedure Rule 11	266
<i>Kennedy v. Hyde</i>	266
<i>Skidmore v. Glenn</i>	271
<i>Winston v. Mediafare Entertainment Corp.</i>	273
2. The Need for Certainty in Agreements to Settle	275
ALI, Restatement of the Law, Contracts (Second)	275
<i>Mattingly v. City of Chicago</i>	277
3. Offers of Judgment	279
Federal Civil Procedure Rule 68	279
Offer of Judgment and Demand for Judgment	280
4. Structured Settlements	281
5. Special Laws on Releasing Particular Civil Claims	283
C. Modifications of Civil Claim Settlements	286
1. Modifications of On the Record Settlements	286
<i>Cerniglia v. Cerniglia</i>	287
2. Modifications of Off the Record Settlements	290
ALI Restatement of the Law, Contracts (Second)	290
3. More Significant Modification Standards	291
<i>Ex parte Owens</i>	291
Chapter VIII • Effects of Partial Settlements on the Viability of Remaining Claims	295
A. Settlements with Agents or Principals	296
<i>Martin v. Yellow Cab Co.</i>	296
<i>DeLuna v. Treister</i>	298
<i>Gilbert v. Sycamore Mun. Hosp.</i>	301
<i>Clark v. Brooks</i>	305

B. Settlements with One of Several Who Are Jointly Liable	307
1. Contribution Laws and Tort Claims	307
Comment: Joint and Several Liability: Protection for Plaintiffs	307
507:7-d Comparative Fault	311
507:7-e Apportionment of Damages	311
507:7-f Contribution Among Tortfeasors	312
507:7-g Enforcement of Contribution	312
<i>Copper Mountain Inc. v. Poma of America, Inc.</i>	314
2. Joint Liability Not Involving Tort	317
<i>Cherney v. Soldinger</i>	317
C. Settlements with Spouses, Parents and Other Family Members	321
<i>Forsyth Memorial Hosp., Inc. v. Chisholm</i>	321
D. Settlements with Insurers or Insureds	325
<i>Clock v. Larson</i>	327
<i>Alexander v. W.F. Shuck Petroleum Co.</i>	330
E. Settlements via General Releases	336
<i>Faier v. Ambrose & Cushing, P.C.</i>	336
<i>Young v. Nissan</i>	338
F. Settlements Involving Claim Assignments	342
<i>Wilson v. Coronet Insurance Co.</i>	343
<i>D. Jere' Webb v. Gittlen</i>	345
G. Settlements Allocating Monies to Coplaintiffs	351
<i>Golden Rule Ins. Co. v. Widoff</i>	351
<i>Homan v. County of Cattaraugus Department of Social Services</i>	354
Chapter IX • Effects of Partial Settlements on Later Trials	357
A. Varying Forms of Partial Settlements	358
Non-Traditional Settlement Agreements in Multi-Defendant Tort Litigation	358
B. The Invalidity of Certain Partial Settlements	360
<i>Dosdourian v. Carsten</i>	360
C. The Effects of Partial Settlements on Factfinding Responsibilities	367
<i>Heupel v. Jenkins</i>	368
<i>27th Avenue Gulf Service Center v. Smellie</i>	372
<i>Garcez v. Michel</i>	374
D. Collateral Source and Set Off Rules	380
<i>Montgomery Ward & Co., Inc. v. Anderson</i>	382
Settlement Allocations, Set-Offs and the Inequitable Apportionment of Damages	386
<i>Amalgamated Transit Local 1324 v. Roberts</i>	391
E. Effects of Settlements on Child Support Duties and Taxes	394
<i>Villanueva v. O'Gara</i>	394
<i>Commissioner v. Schleier</i>	397
Chapter X • Secrecy and Civil Claim Settlements in General	
Jurisdiction Trial Courts	403
A. General Public Access Rights to Judicial Proceedings	404
Access to Judicial Rulemaking Procedures	404
<i>In re Marriage of Johnson</i>	407
Texas Rules of Civil Procedure	411

Florida Statutes	412
Local Rule 83.3 of U.S. District Court for W.D. of Michigan (eff. 10-13-11)	413
B. Special Public Access Rights to Certain Judicial Proceedings	415
C. General Limits on Public Access Rights to Judicial Proceedings	416
Citizens First National Bank of Princeton v. Cincinnati Ins. Co.	417
1. Personal Privacy Interests	419
<i>In re the Marriage of Britney Spears v. Kevin Federline</i>	420
2. Commercial Interests	425
3. Governmental Interests	426
D. Confidentiality Pacts Involving Civil Claim Settlements	427
<i>Daines v. Harrison</i>	430
<i>B.H. v. McDonald</i>	433
Chapter XI • The Enforcement of Civil Claim Settlements	441
A. The Enforcement of On the Record Settlements	442
1. A Complete on the Record Settlement	442
<i>Kokkonen v. Guardian Life Ins. Co.</i>	442
<i>Trade Arbed, Inc. v. African Exp. MV</i>	447
<i>Director of Insurance v. A and A Midwest Rebuilders, Inc.</i>	449
2. A Partial On the Record Settlement	452
3. Enforcement of On the Record Settlements Reached Elsewhere	453
<i>Slover v. Industrial Com'n</i>	454
<i>Ruedlinger v. Jarrett</i>	456
4. Same Case Settlement Enforcement Procedures	458
B. The Enforcement of Off the Record Settlements	462
C. The Regulation of Lawyers as Debt Collectors	464
<i>Heintz v. Jenkins</i>	464
<i>Bitah v. Global Collection Services, Inc.</i>	467
Chapter XII • The Effects of Civil Claim Settlements on Later Civil Litigation	471
A. Basic Principles of Claim and Issue Preclusion	472
<i>Hepper v. Adams County, ND</i>	472
<i>McMahon v. Shea</i>	475
B. Effects of Marriage Dissolution Agreements on Later Civil Litigation	479
<i>Cerniglia v. Cerniglia</i>	480
<i>Delahunty v. Mass. Mut. Life Ins. Co.</i>	481
<i>DeVaux v. DeVaux</i>	488
C. Effects of Employment Dispute Agreements on Later Civil Litigation	492
<i>Tang v. State of R.I. Dept. of Elderly Affairs</i>	492
D. Eliminating Lower Court Precedents through Settlements on Appeal	498
<i>U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership</i>	498
<i>Nearly v. Regents of Univ. of Cal.</i>	502
<i>ATSI Communications, Inc. v. The Shaar Fund, Ltd.</i>	507

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Chapter I

Introduction

§I(A) Intrastate Mix of Constitutional, Statutory, Court Rule, Case Decision and Regulatory Laws on Civil Claim Settlements

- (1) The Variety of Relevant Lawmakers
- (2) Conflicts among Lawmakers
 - (a) Conflicts over Civil Practice Laws
 - (b) Conflicts over Professional Conduct Laws
 - (c) Conflicts over Judicial Administration Laws
- (3) Reconciling General and Special Laws

§I(B) Resolving Interstate Differences in the Laws on Civil Claim Settlements

§I(C) Widgets and Divorce Decrees: Same Contract Law Principles?

§I(D) Same Contract Law Principles for All Civil Claim Settlements?

§I(E) The Differing Contract Laws for the Settlement of Different Civil Claims

§I(F) Contrasts between Resolving Civil and Criminal Cases

Most lawyer training focuses on either discrete areas of the law or on legal skills development. These materials contain no such focus, as they are primarily directed to civil claim settlements. Hopefully they will prompt the exploration of a variety of substantive, procedural, and ethics laws, as well as important lawyering skills.

The introductory materials will first illustrate the mix of constitutional laws, statutory laws, court rules, case decisions, and regulatory laws germane to civil claim settlements. Because several lawmakers have relevant powers (the legislature, supplemented by the judiciary via common lawmaking; a court rules committee, often overseen by the legislature; the high court alone, though aided by a rules committee) and because these powers often depend upon characterization (legal ethics laws are exclusively for the high court, substantive laws are ultimately for the legislature), the substance/ procedure/ ethics dichotomy is quite important. Whatever the appropriate characterization, lawmaking powers are often shared. Additionally, because dispute resolvers in one jurisdiction may be asked to determine a civil claim having connections with a second jurisdiction, the substance/ procedure/ethics dichotomy must also be employed (in different ways) to resolve choice of law issues. Conflict of law analyses often triggers very different characterizations of substance, procedure, and ethics than do separation of powers analyses.

The difficulties in distinguishing between substance, procedure, and ethics can be illustrated by exploring the power of a lawyer to bind a client to a civil claim settlement. Where an Illinois civil claim is settled by an agreement between lawyers and incorporated into a Wisconsin court judgment, whose law and what type of law governs? Are all issues arising from an agreement to resolve an Illinois civil claim necessarily governed by Illinois contract law; by the contract law of the place where the agreement was reached; by Wisconsin civil procedure law; or by the professional conduct law governing lawyers (and if so, is it the law of the lawyer licensing state or the law of the state where the relevant conduct occurred)? Should it matter if the Illinois civil claim involved a tort or civil rights law duty, or if the agreement was made during an in-court proceeding or made out-of-court?

The introductory materials also ask how different an agreement to purchase/sell widgets is from an agreement to resolve a civil claim. In the latter setting, there is a public, not private, arena because a lawsuit is pending; a third person decisionmaker; a possible breach of a legal duty imposed for the general public good; and the possible need to resolve an outsider's as well as a party's interests (in that a lawyer and other lienholders will often seek to be paid). The materials ask, assuming that widget pacts and civil claim settlements have at least some differing legal principles, whether all settlements should be guided by the same contract law principles. That is, are divorce and civil rights settlements comparable? Finally, the materials contrast civil and criminal claim settlements.

A. Intrastate Mix of Constitutional, Statutory, Court Rule, Case Decision and Regulatory Laws on Civil Claim Settlements

Even where all relevant conduct relating to a civil claim has occurred or will occur in a single American state and that conduct is solely a matter of one state's concern, difficulties can still arise in locating applicable legal standards governing civil claim settlements. Usually there are a variety of possible state lawmakers including constitutional drafters; legislators; judges; and rulemakers for civil procedure, regulatory agencies, lawyer ethics, and judicial ethics rules. When the legal standards are located, there may be further difficulties not only because of ambiguities in language, but also because there are uncertainties as to the division of responsibility between lawmakers (inviting attack on certain standards on separation of powers grounds) and because special laws frequently must be reconciled with general laws (where there may be different lawmakers).

1. The Variety of Relevant Lawmakers

When an existing civil claim is settled, it is often the lawyers for the parties who finalize the agreement. Unfortunately, at times one of the parties may later challenge the agreement as having been undertaken by the lawyer without that party's consent. Which lawmakers provide the guidelines for assessing such challenges? Who decides whether and when a lawyer can bind a client without the client's consent? Are there different lawmakers when the agreement arises from a civil case in a traditional state trial court of general jurisdiction than from a case in a state administrative agency proceeding or from